

8/17/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 12
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Caldon Company

Serial No. 75/502,333

Ansel M. Schwartz for Caldon Company.

Rodney Dickinson, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Hohein, Hairston and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

Caldon Company (applicant) has filed an application to
register the mark FLOW WATCH (in typed form) for goods
identified as "leak detection equipment and feed water
fluid flow measurement equipment for power plants" in
International Class 9.¹

¹ Serial No. 75/502,333 filed on May 29, 1998. The application
is based on an allegation of a bona fide intention to use the
mark in commerce. It contains a disclaimer of the word "flow."

The Examining Attorney has refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of the registration of the mark FLOOD WATCH (in typed form) for "leak detection alarm[s]" in International Class 9.²

After the Examining Attorney made the refusal final, this appeal followed. Both applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

We reverse.

The Examining Attorney argues that the marks are nearly identical and the goods are related. Specifically, the Examining Attorney maintains that the marks create the same overall commercial impression. As to the goods themselves, the Examining Attorney has included evidence that "[l]eak detection equipment and leak detection alarms are marketed to and used by power plants." Examining Attorney's Br., p. 4. Even though applicant limits its goods to those for use in power plants and the purchasers thereof may be sophisticated, the Examining Attorney believes that there is a likelihood of confusion because of what he considers to be the near identical nature of the

² Registration No. 1,623,384 issued November 20, 1990. Section 8 and 15 affidavits have been accepted and acknowledged, respectively. A renewal application under Section 9 has been filed. The registration contains a disclaimer of the word "flood."

marks and the closely related nature of the respective goods.

Applicant, on the other hand, submits that "flood" and "flow" are distinct and different words, and that they have different connotations. Applicant also argues that the "registration involves leak detection by general customers in homes, buildings, etc. since there is no indication of any specific market channel." Applicant's Br., p. 3. In addition, applicant argues that the purchasers of the goods at issue are very sophisticated and that there is no actual confusion.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). In considering the evidence of record on these factors, we must keep in mind that "[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

The first question we address is whether applicant's and registrant's marks, when compared in their entirety, are similar in sound, appearance, or meaning such that they

create similar overall commercial impressions. The Examining Attorney submitted definitions of the terms to show that the terms may be similar in connotation. In contrast, applicant argues that "flood" has "the connotation of an uncontrollable event," while "flow" has a "connotation of a movement but no connotation of damage." Applicant's Br., p. 1. Here we find that there are differences in the marks in sound and in appearance and, more importantly, in meaning. Both involve different first words "flood" and "flow," which would be pronounced and appear differently. Beyond these differences, when we consider the connotations of the marks as a whole, we agree with applicant that the mark "FLOOD WATCH" has a significantly different commercial impression than "FLOW WATCH." The first suggests preparing for a possible imminent natural disaster or emergency while the second suggests the routine or normal monitoring of a system in which a liquid circulates or moves. Therefore, we find that the marks are not nearly identical or even very similar. While the marks are "somewhat similar in sound and appearance, they nevertheless possess entirely different connotations." Morrison Milling co. v. General Mills, Inc., 436 F.2d 1050, 168 USPQ 591, 592 (CCPA 1971).

The next factors that are important to our determination are the nature of applicant's and registrant's goods and their channels of trade and prospective purchasers. Applicant, in particular, has limited its identification of goods to those that are leak detection equipment and feed water fluid flow measurement equipment *for power plants*. To determine whether its goods and those of the registrant are related, we look to the identification of goods and services as set forth in the application and registration. In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). In light thereof, we disagree with applicant's argument that registrant's goods would not be sold to power plants. Nothing in the registrant's identification of goods indicates that its leak detection alarms would not be sold to power plants.

However, by limiting its goods to leak detection equipment for power plants, applicant has limited the channels of trade and the potential purchasers who may encounter both marks. In these limited overlapping channels of trade, the goods will likely be purchased after careful consideration by those who are highly knowledgeable. "Where the purchasers are the same, their sophistication is important and often dispositive because

'[s]ophisticated consumers may be expected to exercise greater care.'" Electronic Design & Sales, Inc. v Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992), quoting Pignons S.A. de Mecanique de Precision v. Polaroid Corp., 657 F.2d 482, 489, 212 USPQ 246, 252 (1st Cir. 1981). As stated in an analogous case:

In this regard, we further note that the respective goods of the parties are sophisticated medical equipment which would be selected with great care by purchasers familiar with the source or origin of the products. See In re N.A.D. Inc., 754 F.2d 996, 224 USPQ 969, 971 (Fed. Cir. 1985). Buyers of the parties' goods, as well as potential customers for the products, plainly are highly educated, sophisticated purchasers who know their equipment needs and would be expected to exercise a great deal of care in its selection.

Hewlett-Packard Co. v. Human Performance Measurement, Inc., 23 USPQ2d 1390, 1396 (TTAB 1991).

Similarly, we are confident that purchasers of leak detection equipment and leak detection alarms for power plants would be careful purchasers. They would not be confused as to source or affiliation of leak detection equipment sold under the mark FLOW WATCH and leak detection alarms sold under the mark FLOOD WATCH.

Because of the differences in the marks, the limited channels of trade of applicant's goods, and the

Ser No. 75/502,333

sophistication of the potential purchasers, we conclude that there is no likelihood of confusion.

Decision: The refusal to register is reversed.